ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 18, 2008

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P. O. Box 9277
Corpus Christi, Texas 78469-9277

OR2008-08391

Dear Mr. Bounds:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 313271.

The City of Corpus Christi (the "city") received a request for six categories of information relating to the city's operation of the American Bank Center. You state that you have released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.104 and 552.136 of the Government Code. You further claim that portions of the remaining information may contain proprietary information subject to exception under the Act. Accordingly, you state, and provide documentation showing, that you notified SMG of the city's receipt of the request for information and its right to submit arguments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information, a portion of which contains a representative sample.[1]

Section 552.104 of the Government Code excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. This exception protects a governmental body's interests in connection with

[1]We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held that a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the "competitive advantage" aspect of this exception if it can satisfy two criteria. *See id.* First, the governmental body must demonstrate that it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body's legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body's demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988).

You state that the city, in conjunction with SMG, operates the American Bank Center arenas and convention center. You state that the city competes with other local governmental and private entities that also operate facilities in the areas within close proximity to the center for the same types of events. You state that the submitted naming rights agreement and sponsorship list contain information that identifies SMG clients, as well as the types of incentives that are offered to clients and sponsors who advertise within the center complex. You contend that the release of this information "could easily and unfairly undercut and underbid SMG and the Center in making their own offers for advertising to these same potential clients and sponsors." Based on your representations and our review, we find that you have established that the city has legitimate marketplace interests for the purposes of section 552.104 and that release of the submitted information would cause the possibility of specific harm to the city. Accordingly, you may withhold the information that you have marked under section 552.104 of the Government Code.

You assert that some of the remaining information is excepted under section 552.136 of the Government Code. Section 552.136 provides as follows:

> (a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:
>
> > (1) obtain money, goods, services, or another thing of value; or
> >
> > (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.
>
> (b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. A governmental body must explain, unless it is clear from the face of the document, how the information it seeks to withhold constitutes an access device number for purposes of section 552.136. *See* Gov't Code § 552.301(e)(1)(A), Open Records Decision Nos. 542 (1990) (concluding that Act places on governmental body burden of establishing which exceptions apply to requested information and why), 532 (1989), 515 (1988), 252 (1980). Historically, this office has allowed governmental bodies to withhold certain types of access device numbers, such as bank account numbers, credit card numbers, and insurance policy numbers, under section 552.136 because it is obvious how these types of numbers can be used alone or in conjunction with another device to obtain money, goods, or services, or to initiate transfers of funds. *See* Gov't Code § 552.136(a), (b). You seek to withhold the account numbers you have marked in the submitted documents relating to city expenditures and fees. In this instance, however, you have merely recited the key terms of section 552.136(a)(2) in your argument for withholding the marked information and have not explained how the marked account numbers, whether used alone or in conjunction with another device, may be used to initiate a transfer of funds. Thus, we find that you have failed to explain how the account numbers you have marked constitute "access device numbers" for purposes of section 552.136. Therefore, the city may not withhold the information you have marked under section 552.136 of the Government Code.

Finally, an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from SMG explaining why the requested information should not be released. Therefore, we have no basis to conclude that SMG has protected proprietary interests in any of the requested information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). Accordingly, we conclude that the city may not withhold any portion of the requested information based on the proprietary interests of SMG.

In summary, the city may withhold the information that you have marked under section 552.104 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in

Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

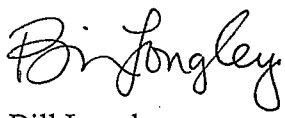
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Bill Longley
Assistant Attorney General
Open Records Division

BL/eeg

Ref: ID# 313271

Enc. Submitted documents

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